

ORDINANCE _____

AN ORDINANCE establishing a Living Building Pilot Program, amending Sections 23.41.004, 23.41.012, 23.41.014, 23.86.006, and 23.90.018, and adding a new Section 23.40.060 to the Seattle Municipal Code to implement the Pilot Program.

WHEREAS, the US Green Building Council estimates that, in the United States alone, buildings account for 65% of electricity consumption, 36% of energy use, 30% of all greenhouse gas emissions, 30% of raw materials use, 30% of waste output, and 12% of potable water consumption (usgbc.org, April 27, 2009); and

WHEREAS, the City's Comprehensive Plan, originally adopted in 1994 and last amended in 2008, includes environmental goals to protect and improve the quality and function of the city's air, land, and water resources; and

WHEREAS, the City's Comprehensive Plan also states Seattle's intent to reduce our climate change impact, including a goal of reducing emissions of carbon dioxide and other climate-changing greenhouse gases in Seattle by 30 percent from 1990 levels by 2024, and by 80 percent from 1990 levels by 2050; and

WHEREAS, 1000 cities, including Seattle, have signed on to the United States Conference of Mayors' Climate Protection Agreement, which calls on cities to take actions in their own communities, including, among others, actions to reduce sprawl, to advocate for the development of renewable energy resources to increase the use of clean, alternative energy, to improve building codes to make energy efficiency a priority, to evaluate opportunities to increase pump efficiency in water and wastewater systems, and to promote sustainable building practices; and

WHEREAS, in 2008 the Washington State Legislature passed and the Governor signed ESSB 6001, now codified as RCW 70.235.020, which establishes a goal for the state of Washington to reduce its output of greenhouse gas emissions to 1990 levels by 2020; and

WHEREAS, the *Living Building Challenge* is a performance-based rating system developed by the International Living Building Institute to recognize developments that achieve an advanced level of sustainability, given what is currently possible and the best knowledge available today. Projects that achieve this level of performance can claim to be among the 'greenest' anywhere, and will serve as role models to others that follow; and

WHEREAS, the *Living Building Challenge* challenges building owners, architects, design professionals, engineers, and contractors to build well-designed, environmentally sound, and self-sustaining buildings that generate all of their own energy with renewable

resources, that capture and treat all of the water needed, and that use resources efficiently;
and

WHEREAS, creating a Living Building requires a fundamentally different approach to building design, construction, and operations that may necessitate changes to current development codes; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Establishment of Pilot Program. This ordinance establishes the Living Building Pilot Program.

Section 2. Goal and Intent. The goal of the Living Building Pilot Program is to encourage the development of buildings that meet the Living Building Challenge by allowing departures from code requirements that might otherwise discourage or prevent buildings from meeting this standard. Overall, the Living Building Pilot Program is intended to:

A. stimulate innovative development that meets the goals of the Living Building Challenge and City of Seattle design guidelines.

B. encourage development that will serve as a model for other projects throughout the City and region and that will stimulate development of new Living Buildings.

C. identify barriers to Living Buildings in current codes and processes.

Section 3. Program Reporting and Evaluation. DPD shall provide the City Council with an annual status report on the Living Building Pilot Program, summarizing the types of projects submitted, types of projects that qualified for participation in the pilot program, and an evaluation of how the proposals have met or are meeting the goals and intent of the Living Building Pilot Program. In order to assess the effectiveness of the Living Building Pilot Program in achieving desired goals, the program shall be evaluated within five years after the effective date of this ordinance, or within 12 months after the first project has been evaluated for its performance against the Living Building Challenge, whichever comes later.

Section 4. A new Section 23.40.060 is added to the Seattle Municipal Code, as follows:

23.40.060 Living Building Pilot Program

A. Purpose. The purpose of this section is to establish a Living Building Pilot Program. The goal of the Pilot Program is to encourage the development of buildings that meet the Living Building Challenge by allowing departures from code requirements that might otherwise discourage or prevent buildings from meeting this standard. Overall, the Living Building Pilot Program is intended to:

1. stimulate innovative development that meets the goals of the Living Building Challenge and City of Seattle design guidelines.
2. encourage development that will serve as a model for other projects throughout the City and region and will stimulate development of new Living Buildings.
3. identify barriers to Living Buildings in current codes and processes.

B. Project qualification.

1. Eligible projects. Only projects that are eligible for design review under Section 23.41.004 and located outside of the shoreline jurisdiction may qualify for the Living Building Pilot Program.

2. Enrollment period. The enrollment period is limited to three years from the effective date of this ordinance or when twelve projects have successfully qualified, whichever comes first.

3. Application requirements. In order to qualify for the Living Building Pilot Program, applicants must submit a plan demonstrating how their project will meet each of the prerequisites of the Living Building Challenge, including an overall design concept, proposed energy balance, proposed water balance, and descriptions of innovative systems. In addition, an applicant shall include a description of how the project serves as a model for testing code improvements to stimulate and encourage Living Buildings in the city.

1 4. Qualification process. An eligible project shall qualify for the Pilot Program
2 upon determination by the Director that it has submitted a complete application pursuant to
3 Section 23.76.010 and has complied with the application requirements in Section 23.40.060.B.3.

4 C. Design review. All Living Building Pilot Program projects are subject to Design
5 Review and shall be reviewed in accordance with the Design Review Process provided in
6 Section 23.41.014.

7 D. Height measurement technique. At the discretion of the applicant, the height of a
8 qualifying project shall be determined using either the definition of building height in Section
9 502 of the Seattle Building Code or the method described in chapter 23.86 of the Land Use
10 Code.

11 E. Compliance with minimum standards.

12 1. Minimum standards. While the intent of the Living Building Pilot Program is to
13 encourage development of buildings that meet or exceed the goals of the Living Building
14 Challenge, qualifying projects that are granted departures shall meet either all of the prerequisites
15 of the Living Building Challenge or 60 percent of the prerequisites of the Living Building
16 Challenge and all of the following alternative standards:

17 a. total building energy usage, subtracting energy generated on site, is 25
18 percent or less of the average energy usage for a comparable building not in the Living Building
19 Program, based on the Energy Information Administration's 2003 Commercial Buildings Energy
20 Use Survey, Energy Information Administration's 2005 Residential Energy Consumption
21 Survey, or other baseline approved by the Director that would provide a comparable estimate;

22 b. total building water usage, subtracting harvested rainwater, is 25
23 percent or less of the average water usage for a comparable building not in the Living Building
24 Program, based on Seattle Public Utility estimates or other baseline approved by the Director
25 that would provide a comparable estimate; and

c. at least 50 percent of stormwater is captured and used on site.

2. No later than two years after issuance of a final Certificate of Occupancy for the project, or such later date as may be allowed by the Director for good cause, the owner shall submit to the Director a report demonstrating how the project has met the Living Building Challenge prerequisites and the standards described in subsection 23.40.006.E.1.

3. If the Director determines that the report submitted pursuant to subsection 23.40.060.E.2 provides satisfactory evidence that the project has complied with the standards contained in subsection 23.40.060.E.1, the Director shall send the owner a certificate stating that the project has complied with the performance standards of the Living Building Pilot Program. If the Director determines that the project does not comply with the standards in subsection 23.40.060.E.1, the Director shall notify the owner of the aspects in which the project does not comply. Components of the project that are included in order to comply with the minimum standards of this program shall remain for the life of the project.

4. Within 90 days after the Director notifies the owner of the ways in which the project does not comply, or such longer period as the Director may allow for good cause, the owner may submit a supplemental report demonstrating that it has made alterations or improvements such that the project now meets the standards in subsection 23.40.060.E.1.

5. If the owner fails to submit a supplemental report within the time allowed pursuant to Section 23.40.060.E.4, the Director shall determine that the project has failed to demonstrate full compliance with the standards contained in Section 23.40.060.E.1, and the owner shall be subject to the penalty in Section 23.90.018.B.6.

Section 5. Subsection A of Section 23.41.004 of the Seattle Municipal Code, which section was last amended by Ordinance 123034, is amended as follows:

23.41.004 Applicability((:))

A. Design Review Required.

1. Design review is required for any new multifamily or commercial development proposal that exceeds one of the following thresholds:

Zone	Threshold
a. Lowrise (L3, L4)	8 dwelling units
b. Midrise (MR)	20 dwelling units
c. Highrise (HR)	20 dwelling units
d. Neighborhood Commercial (NC1, 2, 3)	4 dwelling units or 4,000 square feet of nonresidential gross floor area
e. Commercial (C1, C2)	4 dwelling units or 12,000 square feet of nonresidential gross floor area, when located in an urban center or urban village ¹ , or on a lot that abuts or is across a street or alley from a lot zoned single family, or located in the area bounded by: NE 95th St, NE 145th St, 15th Ave. NE and Lake Washington((=))
f. Seattle Mixed (SM)	20 units or 12,000 square feet of nonresidential gross floor area
g. Industrial Commercial (IC) zone within the South Lake Union Urban Center	12,000 square feet of nonresidential gross floor area

¹Urban centers and urban villages are identified in the Seattle Comprehensive Plan.

2. Design review is required for all new Major Institution development proposals that exceed thresholds in the zones listed in subsection A.1 of this ((§))Section 23.41.004, unless the structure is located within a Major Institution Overlay (MIO) district.

3. Design review is required for all new development proposals located in the following Downtown zones ((and)) that equal or exceed any of the following thresholds:

DOC 1, DOC 2 or DMC Zones

Use	Threshold
Nonresidential	50,000 square feet of gross floor area
Residential	20 dwelling units

DRC, DMR, DH1 or DH2

Use	Threshold
Nonresidential	20,000 square feet of gross floor area
Residential	20 dwelling units

4. Design review is required for all new development proposals exceeding ~~((one hundred and twenty (120)))~~ 120 feet in width on any single street frontage in the Stadium Transition Area Overlay District as shown in ~~((Exhibit))~~ Map A for 23.41.006(A).

5. Administrative Design Review to Protect Trees. As provided in Sections 25.11.070 and 25.11.080, administrative design review (Section 23.41.016) is required for new multifamily and commercial development proposals in Lowrise, Midrise, and commercial zones ~~((when))~~ if an exceptional tree, as defined in Section 25.11.020, is located on the site, even if design review would not otherwise be required by this subsection 23.41.004.A.

6. New multifamily or commercial development proposals in the zones listed in subsection A.1 of this section 23.41.004((;)) that are subject to SEPA solely as a result of the provisions of Section 25.05.908, Environmentally Critical Areas, are exempt from design review except as set forth in subsection A.5 of this section 23.41.004.

1 7. Design review pursuant to Section 23.41.014 is required for projects that are
2 eligible for design review under any provision of this section 23.41.004 and that are participating
3 in the Living Building Pilot Program authorized by Section 23.40.060.

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5 Section 6. Section 23.41.012 of the Seattle Municipal Code, which section was last
6 amended by Ordinance 123046, is amended as follows:

7 **23.41.012 Development standard departures((=))**

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9 C. Limitations upon departures through the design review process established in
10 subsections 23.41.012.B and 23.41.012.D do not limit departures expressly permitted by other
11 provisions of this title or other titles of the Seattle Municipal Code.

12 D. Departures for the Living Building Pilot Program.

13 1. Criteria for Departures. Departures from Land Use Code requirements for
14 projects participating in the Living Building Pilot Program pursuant to Section 23.40.060 may be
15 allowed if an applicant demonstrates that the departure would result in a development that better
16 meets the intent of adopted design guidelines or that the departure would result in a development
17 that better meets the goals of the Living Building Challenge and would not conflict with adopted
18 design guidelines. In making this recommendation, the Board shall consider the extent to which
19 the anticipated environmental performance of the building would be substantially compromised
20 without the departures.

21 2. Scope of Departures. In addition to the departures allowed under Section
22 23.41.012.B, departures for projects participating in the Living Building Pilot Program
23 established under Section 23.40.060 may also be granted for the following:

24 a. Permitted, prohibited or conditional use provisions, but only for
25 accessory uses that would directly address a prerequisite of the Living Building Challenge.

including but not limited to uses that could re-use existing waste streams or reduce the transportation impacts of people or goods.

b. Residential density limits;

c. Downtown view corridor requirements;

d. Floor Area Ratios up to 15 percent above the otherwise applicable limit;

e. Maximum size of use;

f. Structure height, except only rooftop features may extend more than 10 feet above the otherwise applicable limit;

g. Quantity of parking required, minimum and maximum parking limits, and minimum and maximum number of drive-in lanes;

h. Standards for storage of solid-waste containers;

i. The quantity of open space required for major office projects in Downtown zones in subsection 23.49.016.B;

j. Standards for the location of access to parking in Downtown zones;

k. Provisions of Chapter 23.53, Requirements for Streets, Alleys and Easements.

Section 7. Subsection F of section 23.41.014 of the Seattle Municipal Code, which section was last amended by Ordinance 119791, is amended as follows:

23.41.014 Design review process((:))

F. Director's Decision.

1. A decision on an application for a permit subject to design review shall be made by the Director. The Director may condition a proposed project to achieve compliance with design guidelines and to achieve the purpose and intent of this chapter. For applications accepted into the Living Building Pilot Program established under Section 23.40.060, the Director may

also condition a proposed project to achieve the purpose and intent of the Living Building Pilot Program.

2. Projects subject to design review must meet all codes and regulatory requirements applicable to the subject site, except as provided in Section 23.41.012.

3. The Director's design review decision shall be made as part of the overall Master Use Permit decision for the project. The Director's decision shall consider the recommendation of the Design Review Board. ~~((, provided that,))~~ Except for projects accepted in the Living Building Pilot Program established in Section 23.40.060, if four ((4)) or more members of the Design Review Board are in agreement in their recommendation to the Director, the Director shall issue a decision that makes compliance with the recommendation of the Design Review Board a condition of permit approval, unless the Director concludes that the recommendation of the Design Review Board:

- a. Reflects inconsistent application of the design review guidelines; or
- b. Exceeds the authority of the Design Review Board; or
- c. Conflicts with SEPA conditions or other regulatory requirements applicable to the site; or
- d. Conflicts with the requirements of state or federal law.

Section 8. Section 23.86.006 of the Seattle Municipal Code, which section was last amended by Ordinance 122823, is amended as follows:

23.86.006 Structure height((;))

A. Height ~~((M))~~ measurement ~~((T))~~ technique in ~~((A))~~ all ~~((Z))~~ zones ~~((E))~~ except ~~((D))~~ downtown ~~((Z))~~ zones, ((and W)) within the South Lake Union Hub Urban Village, and for the Living Building Pilot Program authorized by Section 23.40.060.

H. For Projects accepted into the Living Building Pilot Program authorized pursuant to Section 23.40.060, the applicant may choose either the height definition of Section 502 of the Seattle Building Code or the height measurement method described in this Section 23.86.006.

Section 9. Subsection B of Section 23.90.018 of the Seattle Municipal Code, which section was last amended by Ordinance 122901, is amended as follows:

23.90.018 Civil enforcement proceedings and penalties((;))

B. Specific Violations.

1. Violations of Section 23.71.018 are subject to the penalty in the amount specified in Section 23.71.018.H.

2. Violations of Section 23.44.041.C are subject to a civil penalty of \$5,000, which shall be in addition to any penalty imposed under subsection A of this section 23.90.018.

3. Violations of Section 23.49.011, 23.49.015 or 23.50.051 with respect to failure to demonstrate compliance with commitments to earn LEED Silver ratings or satisfy alternative standards under any such ((§))section are subject to a penalty in amounts determined under Section 23.49.020, and not to any other penalty.

4. Violations of Section 23.40.007.B with respect to failure to demonstrate compliance with a waste diversion plan for a structure permitted to be demolished under subsection 23.40.006.C is subject to a penalty in an amount determined as follows:

$$P = SF \times .02 \times RDR,$$

where:

P is the penalty;

SF is the total square footage of the structure for which the demolition permit was issued; and

1 RDR is the refuse disposal rate, which is the per ton rate established in SMC
2 Chapter 21.40, and in effect on the date the penalty accrues, for the deposit of refuse at City
3 recycling and disposal stations by the largest class of vehicles.

4 5. Violations of Section 23.40.060.E.2 by failing to submit the report required by
5 Section 23.40.060.E.2 by the date required is subject to a penalty of \$500 per day from the date
6 the report was due to the date it is submitted.

7 6. Violation of Section 23.40.060.E.1 by failing to demonstrate full compliance
8 with the standards contained in Section 23.40.060.E.1 is subject to a maximum penalty of 5
9 percent of the construction value set forth in the building permit for the structure and a minimum
10 penalty of 1percent of construction value, based on the extent of compliance with standards
11 contained in Section 23.40.060.E.1.

12 Section 10. This ordinance shall take effect and be in force thirty (30) days from and
13 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
14 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

1 Passed by the City Council the ____ day of _____, 2009, and
2
3 signed by me in open session in authentication of its passage this
4 ____ day of _____, 2009.

5
6
7 _____
President _____ of the City Council

8
9 Approved by me this ____ day of _____, 2009.

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11 _____
Gregory J. Nickels, Mayor

12
13 Filed by me this ____ day of _____, 2009.

14
15
16 _____
City Clerk

17 (Seal)